IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 683 of 2001
(Old No. 950 of 1987)

Oriental Insurance Company. ... Appellant.

Versus

Smt. Munni Devi and others. ...Respondents.

Sri Deepak Rawat, counsel for the appellant.
Counsel for Oriental Insurance Co. is present.
Sri Manoj kSah, counsel for the claimant.

HON'BLE RAJESH TANDON J.

The claim of the claimant to the extent of Rs 1,05,000/- has been decided. The claim petition has been filed under section 110A of the Motor Vehicles Act by Smt. Munni Devi for grant of compensation against the of vehicle Nos. URB 5012 and URN 9153.

Briefly stated, the deceased Puran Singh boarded the passenger Bus No. URB 5012 at Chaukori for his destination to Pethoragarh. When the bus reached about 1 K.M. before Jarapani, it collided with vehicle No.URN 9153 coming from opposite direction. The deceased who was traveling in the said bus had fallen down in the Khud. The passengers including the deceased traveling in the said bus, sustained injuries, some of them succumbed to their injuries either in the hospital or thereafter and the deceased was one of them. According to the case of the claimant, due to the composite negligence of the respective vehicles URB 5012 and URN 9153. There was head on collision took lace at the place about 1 km. Before jarapani. Consequently the vehicle No.URB 5012 in which the deceased was traveling fell in the Khud and the passengers including the deceased sustained grievous injuries.

Immediately after the accident deceased rushed to PHC Berinag where the Doctor was on duty, has found the condition of the deceased very serious, therefore, he referred the deceased to the district hospital, Pithoragarh. There he was admitted on 14.08.1985 and received treatment till

004.10.1985. After being discharged from the hospital he went to his house where he died on 12th of November, 1985.

According to the claimants the deceased was a young man of 25 years and possessed good and sound physique. He was a regular labour in Post and telegraph, DSPithoragarh and was getting Rs. 715.70p., out of them he used to contribute Rs.500/- per month towards his family. It is alleged that the deceased was an educated and qualified person, had he not died in the accident, he could have got a permanent job in the department and he would have lived upto the age of 65 years. In the claim petition it has been stated that the deceased had spent Rs. 10,000/- on treatment and Rs. 500/-towards cremation and the claimants are entitled for a sum of Rs.2,30,000/- against the owner of the vehicles involved in the accident.

The appellant has contested the petition and field its written statement. The factum of accident has not been denied. It was also admitted that the deceased had received the injuries and it was also not disputed that the death occurred on account of the injuries received by the deceased.

The Tribunal has framed as many as six issues while deciding the issue No.2 and 3 with regard to the rash and negligent driving of the driver of vehicle No. URB 5012, A finding was recorded that the evidence of the driver of both the vehicles clearly establishes that the accident took place due to the composite fault and negligence of both the drivers. Undisputedly the accident had taken place due to fault and negligence of driver of vehicle No. URB 5012 and the driver of vehicle No.URN 9153. Thus, the issue No.2 and 3 was decided against the appellant and a finding was recorded that the accident was caused due to the fault and negligence of both the drivers. While deciding issue No.1 as to whether the death of the deceased Puran Singh occurred due to injuries sustained in the accident. A perusal of the injury report (Ext. 2) shows that the deceased had received the injuries to the following effect:

1. Lacerated wouned measuring 4cm. x 0.1cm on left chick of face below the left lower lid.

2. There is a lacerated wound covered with abrasion measuring 0.6 x0.2 cm. spine greater trocheter of right femer.
3. Abrasion oval in size 1cm. x 1cm. on left skin 3” below left patella.
4. To abrasion measuring 4cm x 0.1 cm. and 3cm. x 0.1 cm. on forehead 2 ½ “above left eye brow.

The report of the doctor that the injuries found on the body of the deceased shows that the deceased was not good condition.

Dr. D.C. Awasthi was examined as senior surgeon who attended the deceased and has stated that despite intensive care till 04.10.1985, the condition of the injured could not be improved. The spleen was also operated and removed. The report shows that the injures was not yet out of danger. Dr. Awasthi has further admitted that it was a major operation of spleen, which was ultimately removed from the body. The resistence power of the injured had gone away. The finding of the tribunal to that effect is quoted below:

“Dr. D.C. Aswasthi, (P.W.2), Senior surgeon who attended the deceased and has stated that despite intensive care till 04.10.1985, the condition of the injured could not be improved. The spleen was also operated and removed. The pelvic fracture also did not unite. That the injured was not yet out of danger, even than finding no other way except to keep him bed ridden either in the Hospital or at his house the deceased was discharged on 14.10.1985. Dr. Awasthi has admitted that it was a major operation of spleen, which was ultimately removed from the body. The resistance power of the injured had lessoned. He was bearing on unanited pelvic bone fracture. The chances of lugn injection were fairly high and, therefore, the injured could have succumbed to injures at any time. The death certificate Ex.3 by the village Pradhan, Dandamatta which is not disputed by the O.P. establishes that Pooran Singh, who stained injuries in the said accident expired on 10.11.1985 at 10.00 a.m.”

In view of the aforesaid facts & circumstances finding was recorded that the deceased had died due to injuries sustained on account of the said accident occurred on 13.08.1985.

The Claims Tribunal has also framed issue with regard to the amount of compensation, which the claimant is entitled and further as to whether the Collector, Pithoragarh is liable to pay a sum of Rs. 20,000/- as compensation to the claimant under the Passengers Insurance Shceme. While deciding the aforesaid issue the statement of Smt. Munni Devi was record. She has deposed that her husband Pooran Singh was aged about 25 years on the date of the accident. He was employed in the Post & Telegraph Department and he used to earn Rs.716.00 towards his pay and was contributing Rs. 500/- per month for the support of his family. Taking into consideration the entire amount which the deceased used to spent in the house, the loss of income has come to a sum of Rs.96,000/-. The calculation has been made after taking into consideration a sum of Rs.400/- and the other expenses which have been awarded to the extent Rs.5000/- for purchasing of the medicines. Thus, a sum of Rs.1,05,000/- has been awarded in total out of which the Claims Tribunal has fixed the libility of Insurance Company to the extent of Rs.42,500/- and New India Insurance Co. on the said amount of each Rs. 42,5000/- and libility has been fastened on the State of U.P. for the payment of Rs. 20,000/-.

Since the vehicle No.URB 5012 is insured with the Oriental Insurance Co. and vehicle No.URM 9153 was insured with New India Insurance Co., Bareilly on the date of accident on the valid policy, therefore, the amount has been distributed between two companies. It is a case where admittedly there has been head on collision and the ultimate sufferer is the claimant who was a young lady of 22 years at the time of accident. She has lost her husband in the said accident and a child was also borned (Km. Deepa). It was a case of an unfortunate event which had occurred and the accident itself speaks about the negligence on the part of the drivers of the two vehicles.

It is a case where the maxim of res ipsa locator to the facts of the case. The another unfortunate part is that the

compensation which has been awarded has not yet been paid to the claimant Smt. Muni Devi who is the wife of the deceased on the unfortunate event which had happened on 13.11.1985.

Exgratia compensation has also been deducted from the amount of Compensation payable to the claimant. It has been held by the Apex Court in 2002 AIR SCW 2920 United India Insurance Co. Ltd. etc. etc. Vs Patricia Jean Mahajan and others etc.etc. that any amount received from any other resources can not be deducted. The observations are quoted below:

“We are in full agreement with the observations made in the case of Helen Rebello (Supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have come correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible form the amount of compensation. There must be come correlation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance4 amount is accelerated due to premature death of the insured. So far other items in respect of which learned counsel for the insurance company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on

account of social security system is made one of the constituent of fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition “receipts from whatever source” is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not go to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken an insurance policy or had not made investments for future returns.”

The legislation under the Motor Vehicles Act has been framed in order to give protection to the society for the loss due to the accident. The accident occurred in the year 1985, the case was instituted in the year 1986 and the claim petition was decided in the year 1987 but till today the sufferer has not been paid the amount of compensation.

The counsel for the appellant has submitted that there has been a limited liability of the insurance company and no issue has been framed.

The record shows that no argument was ever raised before the Tribunal and, therefore, in view of the fact that even the policy regarding the limited liability also could not be proved on behalf of the appellant and, as such, the Claims Tribunal has not framed any issue on this aspect.

However, in my opinion, on behalf of the insurance companies it becomes a social obligation to reimburse the amount of compensation to the deceased’s family without any delay but in this case the delay had occurred due to the various reasons.

Respondents are directed to comply the award within a period of six weeks from the filing of the certified copy of the

order. However, both the parties have agreed that the interest part which has been awarded to the extent of 12% is reduced to 9% The Exgratia payment which has been deducted can not be deducted from the total amount payable to the claimant.

With the above observations, the appeal is dismissed. No order as to costs.

Dated: 25.09.2004. **(Rajesh Tandon J)**

S.S.Negi.